

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oak Harbor, WA, Employer**

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**Docket No. 12-1851  
Issued: February 20, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 31, 2012 appellant filed a timely appeal from a March 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim and a July 26, 2012 nonmerit decision denying reconsideration. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty on February 3, 2012 as alleged; and (2) whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 4, 2012 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim asserting that on February 3, 2012 she became incapacitated and unable to work due to stress. On the claim form, appellant's supervisor, Brian G. Wade, stated that appellant became angry after being denied an early release request. On February 6, 2012 appellant filed an occupational disease claim alleging stress due to factors of her employment on February 3, 2012.

In a February 13, 2012 letter, OWCP requested additional factual and medical evidence in support of appellant's claim. It noted that the evidence was not sufficient to establish that she experienced an employment factor alleged to have caused injury and there was no medical evidence detailing how her employment activities caused or contributed to any diagnosed condition. OWCP asked appellant to describe what happened on February 3, 2012 that caused her claimed condition. It asked that she be as specific as possible and not to respond in terms of general stress. Appellant was provided 30 days to submit the requested information.

In a February 16, 2012 statement, appellant advised that she would be submitting a Form CA-1 for her on-the-job injury claim. She submitted provider notes dated February 3 to March 12, 2012, which noted situational anxiety -- stress; a February 16, 2012 affidavit for time-loss compensation; a June 24, 2009 designation notice under the Family and Medical Leave Act; a February 3, 2012 activity restriction form; work excuses dated June 4 and September 1, 2009, March through December 2011 and January 4, February 3 and 24, 2012; a February 20, 2012 return to work letter; and a February 24, 2012 list of questions from the employing establishment to appellant's physician.

In a February 21, 2012 letter, Lonnie Clark, lead health and resources management specialist for the employing establishment, controverted appellant's claim. He noted that other than her CA-1 form, appellant did not submit any statement regarding her allegations. On February 3, 2012 appellant was assigned to collection duties and she submitted a request to leave one hour early. When she was told her request was denied due to staffing, she became upset and left anyway. Mr. Clark noted that statements from the supervisor and other employees verified that appellant left the premises without permission.<sup>2</sup> He contended that her stress was a self-generated reaction to administrative procedures.

By decision dated March 22, 2012, OWCP denied appellant's claim. It found that she did not provide any specific details surrounding the events leading to her claim and, without such evidence, there was no factual basis to support a compensable work factor.

On June 7, 2012 appellant requested reconsideration. In a June 12, 2012 statement, she listed her need to take time off for physical reasons due to: verbal harassment by her immediate supervisor; physical and mental intimidation by the use of belittling comments; promoting and allowing coworkers to harass and belittle her; sharing personal information about her with coworkers; assignment of more work than she was able to handle; and being called crazy on May 12, 2012. Appellant alleged that stress was aggravated and it was hard for her to perform her duties in a safe manner without harm to herself or others. She submitted a previously

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<sup>2</sup> Witness statements were not provided.

received copy of a February 3, 2012 medical report and medical reports dated March 2 to 22, 2012.

By decision dated July 26, 2012, OWCP denied appellant's reconsideration request.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>3</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>4</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>5</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>6</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>7</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA. However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded. In determining whether the employing establishment has erred or acted abusively, the Board will

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<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>7</sup> *Lillian Cutler*, *supra* note 4.

<sup>8</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>9</sup>

In emotional condition claims, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not meet her burden of proof to establish that she sustained stress in the performance of duty causally related to factors of her federal employment. Appellant alleged that she sustained stress as a result of a February 3, 2012 incident. OWCP denied her claim finding that she did not establish a factual basis for the claim as she did not provide any specific details surrounding her claim.

On February 13, 2012 OWCP asked appellant to provide a detailed description of what happened on February 3, 2012 that caused her claimed condition. Appellant did not submit a response that provided a detailed description of what happened at work that caused her claimed stress. Without a detailed description from appellant regarding the basis of her claim, she has not met her burden of proof to establish the factual component of her claim. Mr. Wade and Mr. Clark of the employing establishment, indicated that appellant was denied an early release request on February 3, 2012. To the extent that appellant claimed stress due to the denial of leave, the Board has held that allegations regarding leave concern an administrative matter and are not compensable absent a showing of error or abuse on the part of the employing establishment.<sup>11</sup> Appellant did not provide a factual statement detailing other work events that caused her stress on or about February 3, 2012. Thus, she did not submit sufficient evidence to establish error or abuse in the leave denial. Appellant has not established a compensable employment factor with regard to February 3, 2012.

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>12</sup> In this case, appellant did not provide a factual statement outlining her claim or provide any corroborating evidence, such as witness statements, to support her claim. Without such evidence appellant failed to provide a factual basis to support her emotional condition claim.

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<sup>9</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>11</sup> *See C.S.*, 58 ECAB 137 (2006); *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>12</sup> *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>13</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>14</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>16</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS -- ISSUE 2**

On reconsideration, appellant submitted a statement in which she provided vague and general information regarding her claim without supporting evidence or specific examples. The Board notes that this statement does not show that OWCP erroneously applied or interpreted a specific point of law and it does not advance a relevant legal argument not previously considered by OWCP. Furthermore, appellant's statement, while new, does not contain any supporting evidence or specific examples from which appellant can establish a factual basis for her claim.

Appellant also submitted a duplicative medical report along with new medical evidence. The medical evidence is not relevant to the issue of whether appellant established a compensable factor of employment based on the employing establishment denying a request for leave. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup> Furthermore, the submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>18</sup>

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<sup>13</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Lori A. Facey*, 55 ECAB 217 (2004); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>14</sup> Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>15</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>16</sup> *Id.* at § 10.607(a).

<sup>17</sup> *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>18</sup> See *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Betty A. Butler*, 56 ECAB 545 (2005).

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.<sup>19</sup>

On appeal, appellant set forth allegations of what happened on February 3, 2012. She also alleged that she has been harassed and intimidated by Mr. Wade on other occasions. The Board has no jurisdiction to review new evidence for the first time on appeal.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty. The Board also finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 26 and March 22, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 20, 2013  
Washington, DC

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

<sup>20</sup> 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).